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State of New York Public Employment Relations Board Decisions from November 13, 1985

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from November 13, 1985

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED UNIVERSITY PROFESSIONS,

Respondent,

-and-

CASE NO. U-8347

THOMAS C. BARRY,

Charging Party.

BOARD DECISION ON MOTION


This matter comes to us on a motion of Professor Thomas C. Barry with respect to his charge alleging that the agency fee rebate procedure of United University Professions (UUP) violates Section 209-a.2(a) of the Taylor Law. Professor Barry moves this Board to remove this matter from the Administrative Law Judge to whom it has been assigned and to "take direct and immediate charge of this case so that the violations complained of here may be swiftly and efficiently corrected." In the alternative, Professor Barry moves this Board to issue an order granting him temporary injunctive relief.

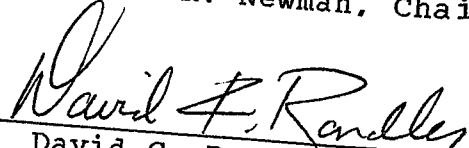
United University Professions has filed a response opposing both the original and alternative aspects of the motion.

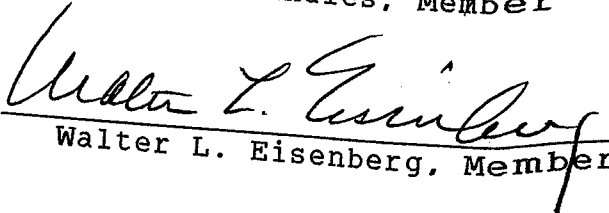
There is no basis in our Rules of Procedure for granting the original aspect of Professor Barry's motion, and there is no basis in the Taylor Law for granting the alternative aspect of it.

NOW, THEREFORE, WE ORDER that the motion herein be, and it hereby is, denied.

DATED: November 13, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WATERVLIET HOUSING AUTHORITY

CASE NO. E-1130

Upon the Application for Designation
of Persons as Managerial or Confidential,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

W. DENNIS DUGGAN, ESQ., for Applicant

ROEMER AND FEATHERSTONHAUGH, P.C. (JOHN R. MINEAUX,
ESQ., of Counsel), for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Watervliet Housing Authority (Authority) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its application for the designation of Helen Corina as confidential in accordance with the criteria set forth in §201.7 of the Taylor Law. The application is opposed by the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO (CSEA), which represents the employees of the Authority.

Section 201.7(a) of the Taylor Law provides that employees may be designated as confidential only if they

assist and act in a confidential capacity to managerial employees in connection with (1) "the preparation for and conduct of collective negotiations", (2) "the administration of agreements" or (3) "personnel administration".

Helen Corina is a senior typist who works at the administrative office of the Authority. She is also president of the CSEA chapter. The staff of the Authority consists of an Executive Director, a clerk typist, a senior typist (Corina), and a tenant relations examiner, all of whom work at the Authority's administrative office. The 1985 operating budget of the Authority shows an additional five employees, a maintenance mechanic and four maintenance laborers, while the testimony refers to a modernization coordinator and a part-time clerk typist who helps with his activities. Of these employees, the parties have agreed that the Executive Director, Charles Patricelli, is "managerial" and that the clerk typist, who serves as his personal secretary, is "confidential" and that both are excluded from the negotiating unit.^{1/}

^{1/}In a 1981 decision, the Director determined that there should be a negotiating unit consisting of all the employees of the Authority other than the Executive Director. In doing so, he rejected a claim of the Authority that Corina should be excluded from the unit by reason of either managerial or confidential responsibilities. The Authority did not file exceptions to this decision of the Director. (14 PERB ¶4034)

The record shows that Patricelli's responsibilities include preparations for and the conduct of collective negotiations for the Authority, and that he has a major role in the administration of collective bargaining agreements and in personnel administration. The Authority asserts that Corina performs confidential tasks relevant to collective negotiations and has access to related confidential information. In support of this proposition, it asserts that she maintains the financial records of the Authority. Indeed, it had applied to the Watervliet Civil Service Commission to have her job title changed to Senior Account Clerk, but the Commission declined to do so.

There is no dispute that Corina maintains the financial records of the Authority, makes its bank deposits, controls its bank book, prepares its payroll, files its tax reports and is involved in the preparation of the Authority's budget. The record shows, however, that these financial documents have no direct bearing upon collective negotiations. The Authority's fiscal year runs from October 1 through September 30. Its collective bargaining agreements with CSEA have run from January 1 through December 31. Accordingly, the preparation of the budget has preceded collective negotiations and the Housing and Urban Development Department has instructed Patricelli

to specify only actual employee costs, not anticipated employee costs. Actual increases are financed out of the reserves of the Authority.

On one occasion Patricelli submitted a proposed budget containing an estimated five percent increase for salaries. The basis of this, however, was not related to the Authority's collective negotiations with CSEA. At that time the parties' agreement provided for an increase in the same percentage as CSEA might negotiate with the City of Watervliet, and Patricelli estimated that the City and CSEA would settle for a five percent increase. In any event the Housing and Urban Development Department directed Patricelli not to include such estimates in future proposed budgets.

The basis of the Authority's claim that Corina is a confidential employee is not based upon any indication that her knowledge of financial operations of the Authority gave her direct information related to the Authority's posture in negotiations. Rather, it is that her intimacy with that financial data means that she knows things that are not intended for the eyes and ears of rank-and-file employees. An indication of this, according to the Authority, is that she knows not only the anticipated income from the Authority's investments, as reflected in the budget, but also its actual income. Thus, according to the Authority, if the budget reflected a six percent interest income but the

investments were actually yielding ten percent, her knowledge of this would give CSEA an improper advantage in negotiations.

According to the Authority, Corina's situation should be compared to that of an employee of the Saugerties Central School District who was declared confidential because she was

privy to information -- and indeed participates in the preparation of such information -- which would show where the District has placed funds that are available for financing employee benefits that may be granted in collective negotiations.^{2/}

While the quoted language from Saugerties might, if taken out of the context of the facts in that case, be applicable to Corina, in context it is not. The information to which the Saugerties employee was privy and which she participated in preparing was not only general financial data. She also was used to "cost out" both union and management proposals in negotiations.^{3/} As indicated in our decision, an employee who is called upon to "cost out" employer proposals in negotiations is confidential because her duties make her aware of the employer's "likely negotiating stratagem" This is not true of Corina.

We also note that the difference that varying rates of interest would make in the reserves of the Authority would

^{2/}Saugerties CSD, 17 PERB ¶3092, at 3141 (1984).

^{3/}See Saugerties CSD, 17 PERB ¶4026 (1984).

not be significant for negotiations given the fact that the reserves are substantially in excess of the total cost of employee wages and benefits, to say nothing of possible increases, the only sum that would be financed from the reserves.^{4/} Moreover, the actual interest income of the Authority is public information.

The circumstances here are therefore similar to those before us in other cases when we have determined that a "confidential" designation is not warranted on the basis of an employee's general knowledge of the employer's finances. Rather, it is the employee's involvement "in the extrapolation for labor relations purposes of the financial data she prepared" which is critical for such a designation.^{5/}

Another argument made by the Authority is that Corina is confidential because her work is stored in the same three filing cabinets which contain Patricelli's files, including correspondence with the Authority's attorney and accountant. Thus, according to the Authority, she has access to those files. The Director rejected this argument

^{4/}The Authority's operating budget for the fiscal year ending September 30, 1985, a public document, shows that the accumulated reserves of the Authority amount to \$336,630. The record shows that wages and salaries, including overtime, were budgeted at \$80,106, and other employee benefits and costs were budgeted at \$58,780.

^{5/}Town of Stony Point, 18 PERB ¶3011, at 3026 (1985).

on the ground that the record does not establish that confidential documents are stored in those file cabinets. In its exceptions the Authority argues that the record establishes that all Patricelli's files are stored in those cabinets.

The record does not establish that all Patricelli's correspondence, including confidential material related to collective negotiation, is stored in those file cabinets. However, even if we were to so find, we do not feel this sufficient reason to declare Corina confidential. The public policy underlying the Taylor Law is that all public employees should be afforded the rights of organization and representation. The exclusion of confidential employees is an exception to this public policy and, by declaration of the Legislature, it should be narrowly construed.^{6/} Where, as here, the confidential negotiation files of the Authority can be segregated from Corina's files with little difficulty, the fact that they may not have been so segregated in the past is not sufficient reason for depriving Corina of her Taylor Law rights of organization and representation.^{7/} The record also establishes

^{6/}See L. 1971, c. 503, as amended by L. 1971, c. 504 and L. 1975, c. 854.

^{7/}Washingtonville CSD, 16 PERB ¶3017 (1983).

that Corina has no access to confidential information relating to contract administration. With respect to personnel matters, Corina maintains payroll and leave records. There is no indication in the record, however, that she has any advance information of confidential personnel matters such as anticipated transfers or discipline. Accordingly, the Authority's contention that she is confidential by reason of access to information regarding contract administration and personnel matters rests upon the same evidence of potential access by reason of working in the Authority's administrative office that it relies upon in connection with her role in negotiations.

One of these, other than access to the three filing cabinets, is that in the absence of Patricelli's secretary she sometimes opens the mail and may therefore have access to confidential information. The record shows that Corina has opened the mail on several occasions but that if there is anything on the face of the envelope that indicates that she should not open it, she does not do so. There is no evidence that she has ever had access to confidential correspondence relating to negotiations contract administration or personnel matters.

The Authority also contends that Corina is confidential because she supervises the confidential clerk typist. The record shows that Corina has diverse

responsibilities including administration of one substantive program of the Authority. In this connection she, as well as Patricelli, assigns work to the clerk typist. Corina's supervision of the clerk typist is limited to the work that she assigns, which is not of a confidential nature.

Finally, the Authority argues that if Corina does not now have confidential responsibilities, the reason is that it has had to guard against giving her such duties because she is the union's president. This is not a sufficient reason for designating Corina confidential.^{8/} It is her actual duties that determine whether Corina is confidential, and not the duties that the Authority might like to assign to her.


In summary, it may be said that the Authority has taken steps to make sure that Corina is not privy to any confidential information which may be relevant to collective negotiations contract administration on personnel matters, and that, if it wishes to do so, it could easily take additional steps to further assure this insulation.


^{8/}See City of Binghamton, 12 PERB ¶3099 (1979).

On the record before us, we affirm the decision of the Director,^{9/} and WE ORDER that the application herein be, and it hereby is, dismissed.

DATED: November 13, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

^{9/}As the issue was not raised by CSEA, we do not address the question whether the application is barred by collateral estoppel or res adjudicata by virtue of the unappealed decision of the Director in 1981.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF SOMERS,

Employer,

-and-

CASE NO. C-2943

LOCAL 456, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Petitioner,

BOARD DECISION AND ORDER

On May 23, 1985, Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board a timely petition, seeking certification as the exclusive representative of certain blue-collar employees of the Town of Somers (employer).

Thereafter, and pursuant to the agreement of the parties, the Director of Public Employment Practices and Representation determined the following negotiating unit to be most appropriate:

Included: All Motor Equipment Operators and
Road Maintenance Foreman.

Excluded: All other employees.


Thereafter, a secret-ballot election was held pursuant to the Director's order, at which five ballots were cast in favor of representation by the petitioner and seven ballots cast against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast valid ballots do not desire to be represented for purposes of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

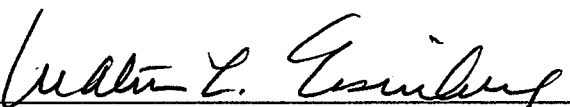
DATED: November 13, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF NIAGARA,

Employer,

-and-

CASE NO. C-2912

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., AFSCME, LOCAL 1000, AFL-CIO,

Petitioner.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

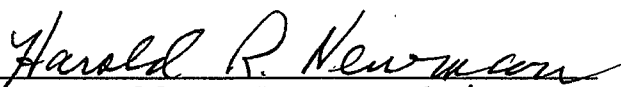
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., AFSCME, Local 1000, AFL-CIO has been designated and selected by a majority of the employees of the above-named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

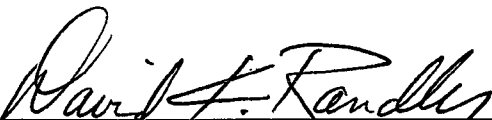
Unit: Included: The following employees in the Youth Bureau, Head Start Program: all full-time and part-time teachers, school monitors, family assistants, head cooks, cooks, secretaries, custodians, and bus driver/custodians.

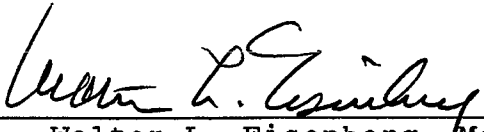
Excluded: The director, education coordinator, social services coordinator, dietician, health coordinator, the director's secretary, full-time and part-time head teachers, and part-time typist in the director's office.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., AFSCME, Local 1000, AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 13, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
THE HOSPITAL,

Employer,

-and-

CASE NO. C-2975

LOCAL 693, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Petitioner,

-and-

NEW YORK STATE NURSES ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Local 693, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time (regular), part-time and per-diem employees licensed or otherwise lawfully authorized to practice as a registered professional nurse employed by the Employer to perform registered professional nursing in nursing service, nursing education or nursing administration.

Excluded: Assistant Director of Nursing, Director of Nursing, and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 693, International Brotherhood of Teamsters and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 13, 1985
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

Walter L. Eisenberg

Walter L. Eisenberg, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
HIGHLAND CENTRAL SCHOOL DISTRICT,
Employer,

-and-

CASE NO. C-2979

HIGHLAND ADMINISTRATORS ASSOCIATION,
SCHOOL ADMINISTRATORS ASSOCIATION OF
NEW YORK STATE,

Petitioner,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,


IT IS HEREBY CERTIFIED that the Highland Administrators Association, School Administrators Association of New York State has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principals.

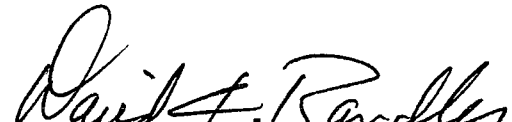
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Highland Administrators Association, School Administrators Association of New York State and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 13, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MOHAWK VALLEY COMMUNITY COLLEGE,

Employer,

-and-

CASE NO. C-2960

ASSOCIATION OF MOHAWK VALLEY COLLEGE
ADMINISTRATORS, SCHOOL ADMINISTRATORS
ASSOCIATION OF NEW YORK STATE,

Petitioner,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Association of Mohawk Valley College Administrators, School Administrators Association of New York State has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Academic department heads; Directors; Dean of Lifelong Learning and Community Services; Program Specialist, Business and Industry; Registrar; Coordinator of Off-Campus Administrative Services; Coordinator of Student Services.

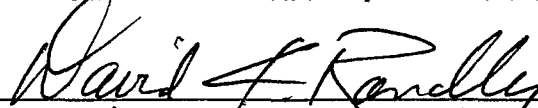
Excluded: President; Vice President for Instruction; Vice President for Administrative Services; Dean of Student Services; Dean of Rome Campus; Director of Computer Services; Executive Assistant to Vice President for Instruction; Director of Institutional Advancement; Director of Personnel; Assistant to President; Assistant to Vice President for Administrative Services; Controller; Assistant to the Director of Personnel.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Association of Mohawk Valley College Administrators, School Administrators Association of New York State and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

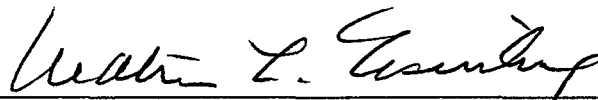
DATED: November 13, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member